

The latter ground depends upon the evidence. Strictly speaking it would be right to remit the matter back to the Court which took the pleas and order that the matter should continue from the point it reached on the 27th December, but it is suggested that it will be more convenient if I fix the fines myself.

Before doing so there is the point of misjoinder. I do not think that section 164 of the Criminal Procedure Code applies but that the case falls within section 165 of the Criminal Procedure Code. The four charges of offering for sale are a series of acts constituting one transaction: that is the offer of the four kinds of goods is made at the one place and at the one time. The fifth charge can be joined to these because it is a charge of the same kind. But in any event if this additional charge is a misjoinder no injustice has been caused by it.

The gravity of the offence I have to consider in the light of the grounds of judgment, the recorded evidence of Mr. Kemp, the statements of the accused, the four changes in maximum prices in the last three months prior to the offence and the dispute among the labourers. It is only right that the fines should be substantial but not in the circumstances disclosed that they should reach anywhere near the permitted maximum. I accordingly reduce them.

I reduce the first fine of \$750 to \$250, the second fine of \$500 to \$200, the third fine of \$300 to \$200, the fourth fine of \$300 to \$200, and the fifth fine of \$50 may stand.

Fines reduced accordingly. Excess paid ordered to be refunded.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

February 24, 1940.

ALI BIN YUSOF v. PUBLIC PROSECUTOR.

[PERAK CRIMINAL APPEAL]

Minor Offences Enactment (Cap. 46)—Sec. 35 (i)—Possession of Property reasonably suspected of being stolen—Evidence—Accused's character.

The appellant, a well known public character from the Police point of view, was found trying to pawn a paper umbrella worth a few cents. He was arrested, tried and convicted under Section 35 (i) of the Minor Offences Enactment which reads as follows:—

35 (i) Any person who has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained shall, if he fails to account satisfactorily how he came by the same, be liable to a fine of fifty dollars, or to imprisonment for three months.

Held, that the character of the accused, by itself, is not sufficient to raise reasonable grounds for suspicion that the property has been stolen.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

T. V. A. Brodie for Public Prosecutor.

Murray-Aynsley, J.—In this case the appellant was charged under section 35 (i) of Cap. 46.

The appellant, a well known public character from the Police point of view, was found trying to pawn a paper umbrella worth a few cents. When the Enactment refers to something reasonably suspected of being stolen, I think, that the suspicion must be based on something more than the character of the accused, which may be such that the possession of anything at all gives to suspicion.

In the present case, apart from the character of the appellant, I do not think that there was anything at all to give rise to suspicion. In these circumstances I consider that the conviction must be quashed.

Appeal allowed. Conviction quashed.

JOHORE REPORTS.

[APPELLATE CRIMINAL JURISDICTION]

LAVILLE, J.

September 12, 1940.

ONG SIEW SWEE v. PUBLIC PROSECUTOR.

[JOHORE BAHRU CRIMINAL APPEAL No. 14 of 1940]

Motor Vehicles — Overloading — conditions of licence — trailer a carriage — No power to license carriage — Traction Engines and Motor Cars Enactment, Section 4 (i).

The appellant had been convicted on a charge, brought under Section 4 (i) of the Traction Engines and Motor Cars Enactment of having used a trailer other than in conformity with the terms of its licence relating to maximum load.

Held on appeal (1) Section 4 (i) does not, by itself, make it an offence to use a licensed traction engine or motor car in a manner contrary to the terms of its licence, and (2) that, in any event, a trailer is a carriage and is not affected by the provisions of Section 4 (i). *Obiter:* the Enactment confers no power to make rules for the licensing of carriages, and the rules relating thereto are, therefore, *ultra vires*.

MAGISTRATE'S CRIMINAL APPEAL.

The facts and arguments sufficiently appear from the Judgment.

Chandran for Appellant.

Ismail, D.P.P. for Respondent.

Laville J.—This is an appeal against a conviction by the 2nd. Magistrate, Johore Bahru of one Ong Siew Swee for driving a motor-lorry J. 7695 with a trailer T.J. 58 attached thereto on 21.5.40 at Johore Bahru, the said trailer having an excess weight of 1 ton 1 cwt. 2 qrs. 21 lbs. over that allowed by its licence, an offence under section 4 (i) of the Traction Engine and Motor-Cars Enactment No. 12, and punishable under section 28 of the said Enactment.

The grounds of appeal are that though the weigh-bridge on which the laden trailer was weighed by the Traffic Inspector gave the excess weight as charged the Conservator of Forests in his evidence stated that the weight of dry timber of all sorts has been scientifically estimated according to the cubic feet contained therein and that the total load carried by the lorry and trailer that day was about 2 tons 200 lbs., and that as both are scientific methods of weighing the accused should be given the benefit of the doubt.

There is no weight in this contention and the application must be rejected on that ground: the evidence of the Conservator of Forests refers to the total weight of the logs and is not specific but casual, whereas the trailer and the weight thereon was weighed in detail by the Traffic Inspector on a machine specially constructed for the purpose and whose accuracy there is no reason to doubt.

But on other grounds this appeal must be allowed. Section 4 (i) of Enactment 12 makes it an offence to drive an unlicensed traction engine or motor-car: it makes no reference to carriages: it does not make it an offence to drive a licensed motor-car or traction engine contrary to the conditions set forth on its license: the remedy for a breach of the conditions is either under section 3 or other sections which make the breach of individual conditions an offence or rules which do so.

It is to my mind extremely doubtful whether there is any power under the enactment to license carriages. The heading of the enactment gives its object as "to regulate the use on public thoroughfares of Traction Engines and Carriages attached thereto and Motor-Cars", and carriage is defined as "wagons etc. and every other description of carriage intended to be drawn by a traction engine."

A traction engine is defined as a self-propelled vehicle designed to draw a carriage or for the carriage of goods etc.

It would appear therefore that a trailer is a carriage under the enactment. But nowhere in the enactment is it stated that no carriage unless it is licensed under this enactment shall be drawn by a motor-car or traction engine on the highway, or that no traction engine or motor car shall draw a carriage on the highway without being licensed for that purpose.

Section 4 of the enactment deals only with motor cars and traction engines. The only powers in regard to carriages given by the enactment are under section 13 by notification in the Gazette to restrict the weight of carriages (and by section 2 weight means tare and freight), under section 19 similarly to prescribe rates and charges for conveyance of passengers and goods by carriages.

Under section 27 to make rules as to the brakes, the weight to be carried by carriages, the licensing etc. of carriages, the lights thereon. In my opinion an enactment can only give power to make rules to regulate some course of action which is authorised by the enactment itself, and if that course of action is not authorised by the enactment any authority to regulate it by rule must be ineffective for lack of something to regulate. If this view is correct there is no power to license carriages and the rules as regulating the licensing thereof are redundant.

If there is power under the enactment as it stands to license carriages then Rule 12 of the Enactment is that under which accused could have been charged and convicted.

There are other objections to this conviction: the licensed number of the trailer in the charge is given as T.J. 58: there is no reference in the prosecution evidence to this licence and it is not produced. A note from the Licensing Officer is given in evidence which contains the tares of license trailers 68, 74, and 17 none of which are the subject of this charge.

For these reasons I am of opinion that though the arguments put forward by the appellant are not effective, the Court should allow this appeal and reverse the conviction and set aside the sentence, and order that the fine if paid be refunded.

Appeal allowed.